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or the officer responsible for criminal investigation.

[74 FR 14626, Mar. 31, 2009, as amended at 75 FR 53167, Aug. 30, 2010]

Subpart 25.7—Prohibited Sources

SOURCE: 73 FR 33638, June 12, 2008, unless otherwise noted.

25.700 Scope of subpart.

This subpart implements—

(a) Economic sanctions administered by the Office of Foreign Assets Control (OFAC) in the Department of the Treasury prohibiting transactions involving certain countries, entities, and individuals;

(b) The Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174);

(c) The Iran Sanctions Act of 1996 (Iran Sanctions Act) (Pub. L. 104-172; 50 U.S.C. 1701 note), including amendments by the Iran Freedom Support Act (Pub. L. 109-293) and section 102 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111-195); and

(d) Section 106 of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. 8515).

[75 FR 60256, Sept. 29, 2010]

25.701 Restrictions administered by the Department of the Treasury on acquisitions of supplies or services from prohibited sources.

(a) Except as authorized by OFAC, agencies and their contractors and subcontractors must not acquire any supplies or services if any proclamation, Executive order, or statute administered by OFAC, or if OFAC's implementing regulations at 31 CFR Chapter V, would prohibit such a transaction by a person subject to the jurisdiction of the United States.

(b) Except as authorized by OFAC, most transactions involving Cuba, Iran, and Sudan are prohibited, as are most imports from Burma or North Korea into the United States or its outlying areas. In addition, lists of entities and individuals subject to economic sanctions are included in OFAC's List of Specially Designated Nationals and Blocked Persons at <http://www.treas.gov/offices/enforcement/>

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ofac/sdn. More information about these restrictions, as well as updates, is available in OFAC's regulations at 31 CFR Chapter V and/or on OFAC's website at <http://www.treas.gov/offices/enforcement/ofac>.

(c) Refer questions concerning the restrictions in paragraphs (a) or (b) of this section to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, (Telephone (202) 622-2490).

25.702 Prohibition on contracting with entities that conduct restricted business operations in Sudan.

25.702-1 Definitions.

As used in this section—

Appropriate Congressional committees means—

(1) The Committee on Banking, Housing, and Urban Affairs, The Committee on Foreign Relations, and the Select Committee on Intelligence of the Senate; and

(2) The Committee on Financial Services, the Committee on Foreign Relations, and the Permanent Select Committee on Intelligence of the House of Representatives.

Business operations means engaging in commerce in any form, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

Marginalized populations of Sudan means—

(1) Adversely affected groups in regions authorized to receive assistance under section 8(c) of the Darfur Peace and Accountability Act (Pub. L. 109-344) (50 U.S.C. 1701 note); and

(2) Marginalized areas in Northern Sudan described in section 4(9) of such Act.

Restricted business operations—

(1) Means, except as provided in paragraph (2) of this definition, business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174).

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(2) Does not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

(i) Are conducted under contract directly and exclusively with the regional government of southern Sudan;

(ii) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;

(iii) Consist of providing goods or services to marginalized populations of Sudan;

(iv) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(v) Consist of providing goods or services that are used only to promote health or education; or

(vi) Have been voluntarily suspended.

[64 FR 72419, Dec. 27, 1999, as amended at 74 FR 40465, Aug. 11, 2009]

25.702-2 Certification.

As required by the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174), each offeror must certify that it does not conduct restricted business operations in Sudan.

25.702-3 Remedies.

Upon the determination of a false certification under subsection 25.702-2—

(a) The contracting officer may terminate the contract;

(b) The suspending official may suspend the contractor in accordance with the procedures in Subpart 9.4; and

(c) The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in Subpart 9.4.

25.702-4 Waiver.

(a) The President may waive the requirement of subsection 25.702-2 on a case-by-case basis if the President determines and certifies in writing to the appropriate congressional committees that it is in the national interest to do so.

(b) An agency seeking waiver of the requirement shall submit the request to the Administrator of the Office of Federal Procurement Policy (OFPP), allowing sufficient time for review and approval. Upon receipt of the waiver request, OFPP shall consult with the President's National Security Council, Office of African Affairs, and the Department of State Sudan Office and Sanctions Office to assess foreign policy aspects of making a national interest recommendation.

(c) Agencies may request a waiver on an individual or class basis; however, waivers are not indefinite and can be cancelled if warranted.

(1) A class waiver may be requested only when the class of supplies is not available from any other source and it is in the national interest.

(2) Prior to submitting the waiver request, the request must be reviewed and cleared by the agency head.

(3) All waiver requests must include the following information:

(i) Agency name, complete mailing address, and point of contact name, telephone number, and email address;

(ii) Offeror's name, complete mailing address, and point of contact name, telephone number, and email address;

(iii) Description/nature of product or service;

(iv) The total cost and length of the contract;

(v) Justification, with market research demonstrating that no other offeror can provide the product or service and stating why the product or service must be procured from this offeror, as well as why it is in the national interest for the President to waive the prohibition on contracting with this offeror that conducts restricted business operations in Sudan, including consideration of foreign policy aspects identified in consultation(s) pursuant to 25.702-4(b);

(vi) Documentation regarding the offeror's past performance and integrity (see the Past Performance Information Retrieval System including the Federal Awardee Performance Information and Integrity System at <http://www.ppirs.gov> and any other relevant information);

(vii) Information regarding the offeror's relationship or connection